RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४७] गुरुवार ते बुधवार, जानेवारी २३-२९, २०१४/माघ ३-९, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 10 Of 2002.— Western Hivolts Equipments, Pvt. Ltd. Jayasingpur, L. K. Akivate Audyogik Shakari Vasahat, At Post : Jaysingpur, District Kolhapur.— *Petitioner.*—*Versus*—Shri Ananda Ramchandra Ambi, At post and Taluka Shirol, District Kolhapur.— *Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. S. Nevagi, Advocate for the Petitioner.
Shri P. S. Kulkarni, Advocate for Respondent.

Judgment

This is a Revision by an Employer challeging legality of order passed below Exh. U-2 in Complaint (ULP) - 319 of 2001 by Labour Court, Kolhapur, whereby he is directed to allow his employee to resume his previous post, till disposal of the Complaint.

2. Admittedly, present Respondent (hereinafter referred to as the original Complainant) joined the present petitioner (hereinafter referred to as Company) as a painter. The Company is registered under the factories Act and is engaged in manufacturing transformers.

3. It is case of the Complainant that he stated suffering from fever from 20th October 2001 and accordingly sent medical certificate by registered post to the Company on 2nd November 2001. He recovered from illness and visited Company's premises on 17th November 2001 to join duties. He submitted requisite fitness certificate dated 17th November 2001. However, the Company informed him to produce medical treatment certificate and refused to allow him to join the duties till production thereof. Eventually, he again visited the Company on 19th November 2001 with medical treatment certificate. Even then, he was not allowed to join. He was told that he will be informed later on as when to join. He, thereafter time and again requested the company to allow him to join on duties but there were no positive action by the Company. Ultimately, he sent his grievance by registered letter dated 30th November 2001. The Company received the letter but did not inform him in either way.

4. It is alleged by the Complainant that he is orally terminated on 19th November 2001 by not allowing to join the duties. His termination is in violation of provisions of Section 25 F of the I. D. Act and is an unfair labour practice under items 1(a), (b), (d) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act 1971. He made an application (Exh. U-2) under section 30(2) of the M. R. T. U. and P. U. L. P. Act to direct the Company to allow him to join duties till devision of main complaint.

5. The Labour Court issued notice of main complaint as well as interim application (Exh. U-2) to the Company returnable on 1st January 2002.

6. The company appeared on 1st January 2002 and made an application Exh. C-14 contending that it has now here terminated the Complainant and, therefore, the labour Court has no jurisdiction. It further contended that the Complainant is transferred on 3rd December 2001, did not collect transfer order despite assurance and hence it was sent to the Complainant by registered post on 22nd December 2001. It further contended that there is no cause of action for filing the complaint. Simultaneously, it prayed for permission to file detailed pleadings as and when needed. Ultimately, the company prayed to dismiss the complaint for want of cause of action as sell as jurisdiction.

7. The Labour Court then directed the Complainant to file say to Company,s application Exh. C-14. But the Complainant did not file his say.

8. The Labour Court, on perusal of documentary evidence and hearing both parties, observed that the Complainant received transfer order on 24th December 2001 *i. e.* after services of a Court's notice upon the Company and, therefore, the Complainant is transferred with *malafide* intention to show existence of relationship as an employer-employee and there is no termination. It further observed that the company did not explain as to why transfer order dated 3rd December 2001 was sent to the Complainant after receipt of Court's notice. Eventually, it held that *prima facie* case of oral termination is made out and allowed interim relief application (Exh. U-2) directing the Company to allow the Complainant to resume on his previous post till decision of main complaint, vide order dated 15th January 2002. The same is challenged in this Revision.

9. I heard both Advocates, Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order granting interim relief is justifiable at the peculiar stage ?

(*ii*) What Order ?

10. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

11. It has come on the record that the Complainant sent letter dated 30th November 2001 to the Company alleging that he is not allowed to join the duties. The Company received said letter on 3rd December 2001. It has also come on the record that the Company sent transfer order dated 3rd December 2001 to the Complainant by registered post and the Complainant received the same on 24th December 2001. The Complainant then gave a reply dated 28th December 2001 requesting the Company to withdraw his transfer order, on various grounds.

12. Shri Nevgi, learned Advocate representing the company argued that the Complainant has nowhere filed an affidavit that his transfer is after thought or *malafide* one. Company's Managing Director filed an affidavit at Exh. C-15 in support of company's application Exh. C-14 that the Complainant is nowhere terminated. The Company, no where disputed that the Complainant is its employee. Therefore, observations in impugned order are premature and out come of conjuncture. Plea of jurisdiction goes to the root of matter and needs to be decided first. Company's application Exh. C-14 is not rejected. Besides, leave to file written statement is prayed in Application Exh. C-14 is also not rejected. In addition, impugned order is passed without obtaining company's say on the interim application. As such, impugned order is unsustainable. He further added that the Company be allowed to file say to the interim application and then interim Application (Exh. U-2) can well be decided on merits.

13. Shri P. S. Kulkarni, learned Advocate representing the Complainant replied that a revision can be entertained only if the impunged order, if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against who it was made, as provided under provision (b) of section 15 of Civil Procedure Code. Therefore, the revision is liable to be dismissed on this sole ground itself. The Company will not suffer irreparable loss if impugned order is allowed to stand. The Complainant cannot be dismissed without holding an enquiry despite application Exh. C-14. For that end, he placed reliance in *Waman Pundlikrao Deshmukh* V/s. *Shivaji Agriculture College, Amravati repoted in 1995 II CLR at page 732. (Bom. H. C.).* He further explained that the Company did not file the written statement and hence, there is no denial of pleadings in the complaint.

14. Advocate Shri Kulkarni further argued that the Company was under obligation to file written statement as per Rules 65 and 67 of Labour Court (Practice and Procedure) Rules. There is no contention in Company's Application Exh. C-14 to frame preliminary issues of termination. *Prima facie,* the transfer order is made to overcome oral termination. It is a clock and device to frustrate the complaint. As such, observations of labour Court at interim stage, will prevail.

15. It needs to be noted at the outset that the company filed application Exh. C-14 on the first day of appearance contending that its Managing Director is also on record at Exh. C-15. The Company has sought leave to file the written statement. It is contended in Company Application Exh. C-14 that there is no oral termination. Relationship of employer-employee still exists and hence there is no cause of action as well as jurisdiction. The complainant was called upon to file his say but did not file the say. There was no difficult for him to file say and to plead that transfer order is after thought. It is also interesting to note that learned Labour Court has nowhere passed any judicial order on Company's application Exh. C-14, then obtained company's say to the interim Application (Ex. U-2) and then decided the interim application. As such, *prima facie,* it cannot be accepted that the Company failed to file say on application and there is no denial of averments in the complaint.

16. It appears that the learned Labour Court considered company's application Exh. C-14 as say to the interim application and proceeded further. I may appreciate proceeding further on merits, had the Application (Exh. C-14) would have been firstly rejected. Then one can understand that there is no pleading of the Company and averments in the complaint needs to be accepted, *prima facie.* On the contrary, the facts are otherwise. I, therefore, find that no sufficient opportunity was given to the Company to file its say on the interim application (Exh. U-2). Consequently the observations in the impugned order are premature and are impermissible at the stage at which those were made. Accordingly, I answer Point No. 1 in the negative.

17. As regards order transferring the Complainant, no observations can be made in this Revision as those will be premature. Suffice to say that the Complainant is at liberty to challenge alleged transfer order according to provisions of law.

18. In the result, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order directing the Company to allow the Complainant to resume on his previous post, is set-aside.

(*iii*) The Labour Court is directed to decide Company's Application (Exh. C-14) on merits and then to decide interim relief application (Exh. U-2) afresh after extending reasonable opportunity of being heard to the company, if necessary.

(*iv*) The Company is directed not to terminate services of the Complainant, otherwise in due course of law, till decision of interim application (Exh. U-2), afresh.

(*v*) R. and P. be sent forthwith to Labour Court, Kolhapur and parties shall appear there on 14th March 2002.

(*vi*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 28th February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 35 Of 1996.—Shri Laxman Daulatrao Desai, 800, Line Bazar, New Palace, Kolhapur.—*Complainant.*—*Versus*—(1) Principal, Industrial Training Institute, Kalamba Road, Pune-5. Kolhapur.— *Respondent No. 1.* (2) Dy. Director, Technical Education, Ghule Road, Pune 5.— *Respondent No. 2.* (3) Director of Technical Education, 3 Mahapalika Marg, Bombay 1.— *Respondent No. 3.*

In the matter of : Complaint U/s. 28(1) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Govt. Pleader for the Respondent 1 to 3.

Judgment

This is a complaint purported to be under section 28(1) read with items 9 and 10 of Sch. of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Complaint started working under Industrial Training Institute at Pune as Painting and Decoration Instructor from 20th November 1963. He was then transferred to Industrial Training Institute at Kolhapur in the year 1968. Industrial Training Institute at Kolhapur at Pune and Kolhapur come under Pune Region. The Complainant thereafter was transferred to Industrial Training Institute at Amravati (Nagpur Region) by order dated 12th August 1968. He then worked at Amaravati from 22nd August 1968 to 1st April 1979. His name was at Sr. No. 41 in the seniority list while working under Nagpur Region.

3. The Complainant was then transferred to Industrial Training Institute at Kolhapur (under Pune Region) by order dated 1st August 1979. Transfer order says that he is transferred on his request and he will be junior most in the seniority list of Instuctors under Pune Region. In the seniority list of Pune Region his name was shown at Sr. No. 511 *i. e.* junior most person. He then retired at Kolhapur itself on 30th June 1995.

4. The Complainant, then filed above complaint on 30th January 1996 alleging that New Pattern was introduced in the year 1968, whereby post of Painting and Decoration Instrructor become surplus at Kolhapur. Eventually, he was transferred to Amravati for convenience of Government and not on his request. At that time, his number in seniority list was at Sr. No. 41. He was transferred to Pune Region and posted to Industrial Training Institute at Kolhapur on his request, however, he cannot be kept as junior most in the seniority list of Pune Region. He might have been kept as junior most for local promotion under Pune Region. Respondent No. 3 Director of Technical Education is the controlling Authority for promotion, gradation etc. He, while in service requested Respondent No. 2 Director of Technical Education to properly entered his name at Sr. No. 41 in the seniority list of Pune Region, but Respondent No. 3 rejected his Application. Respondent No. 3's act of refusing to correct his seniority list is contrary to the Maharashtra Civil Services (Regulation of Seniority) Rules 1982 and is an unfair labour practice. His seniority does not affect despite transfer. He was entitled to be promoted on the post of Group Instructor as per Rules. However, was falsely refused promotion on the false grounds that his name in the seniority list is at Sr. No. 511. The unfair labour practice is continuing one and hence the complaint is within limitation.

5. On above averments, the Complainant prayed for declaration of requisite unfair labour practice, direction that he is deemed to be promoted in December, 1993 on the post of Group Instructor, further direction to extend pay and pension benefits of promotional post and other consequential reliefs.

6. The Respondents filed their written statement at Exh. C-6 and transferred all material allegations made by the Complainant. They contended at the outset that seniority list is maintained regionwise. The Complainant was kept as junior most in the seniority list of Pune Region, when was transferred from Amravati to Kolhapur as specifically stated in his Transfer order. The Complainant accepted said condition and then joined at Kolhapur (Pune Region). Eventually, his name was entered at Sr. No. 511 in the seniority list of Pune Region. Employees senior to him in Pune Region's Seniority list are promoted Therefore, they have not indulged into any unfair labour practice. Finally, they prayed for dismissal of the complaint.

7. Considering rival submissions, following points arise for my determination:—

(*i*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971 ?

(*ii*) What Order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Complainant is dismissed.

Reasons

9. It needs to be stated at the outset that averments in the complaint are short of unfair labour practice under item 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, and hence point thereof is not framed.

10. The complaint produce copies of representations made to Asstt. Commissioner of Labour, Kolhapur and Respondent No. 3 Seniority list published by Deputy Director of Nagpur Region and Seniority list published by deputy Director of Pune Region. He also produced relevant documents regarding his retirement and reply of Respondent No. 2 regarding his seniority. He also examined himself at Exh. UW-1. In rebuttal, the Respondent produced copy of Complainants, the Respondent produced copy of Complainants transfer order dated 1st August 1979, concerned orders thereof and copy of concerned pages of his service book. No oral evidence was led by the Respondent.

11. The material facts except controversy regarding Complainant's transfer from Amravati (Nagpur Region) to Kolhapur (Pune Region) on his request of otherwise, are no longer in dispute. The question as to transfer from Amravati to Kolhapur on request or otherwise goes to the root of the matter and needs to be decided first.

12. The Complainant deposed that he was transferred from Amravati to Kolhapur in due course, never requested for out of region transfer and reason put forth in the written statement (Ex. C-6) is false. However, he replied in the cross examination that Respondent No. 3 alone can make out of region transfers and he was transferred form Nagpur Region to Pune Region as per order passed on 8th January 1979 by Respondent No. 3. He further accepted that Respondent No. 2 (Deputy Director of Pune Region) then posted him at the Industrial Training Institute, Kolhapur *vide* order dated 12th January 1979. He also accepted that Principal of Industrial Training Institute, Amravati made an endorsement in his service book regarding out of region transfer made by Respondent No. 3.

13. Shri Badadare, learned advocate representing the Complainant vehemently argued in the first phase that the Respondents have not produced Complainant' alleged application for out of region transfer and, therefore, Complainant's version that transfer from Amravati to Kolhapur was in due course and was not request transfer, has to be accepted.

14. Shri Pisal, learned Assistant Government Pleader representing Respondents 1 to 3 replied that Respondent No. 3's order dated 8th January 1979 categorically says that the Complainants is transferred on his request and is not entitled to any allowances. Accordingly, a specific endorsement is made by Amravati Principal in Complainant's service book. Had there been no such order of Respondent No. 3, the Complainant could not be transferred out of region as admittedly, Respondent No. 3 can alone make out of region transfer. He then took me through complaint and pointed out that paragraph 3(5) thereof says that the Complainant requested to re-transfer him to Pune Region. The Complainant ought to have protested in the year 1979 itself if out of Region Transfer was not on his request. As such, plea that out of Region Transfer was not on 'request' is totally after thought.

15. Firstly, the Complainant is bout by his pleadings. He has categorically pleaded in paragraph 3(5) of the complaint that he requested for re-transfer to Pune Region. He has further pleaded in paragraph 3(9) of the Complaint that he might have been kept last in the seniority list for local promotion in Pune Region because he was transferred on his own request. In addition, he has specifically accepted in representation dated 20th October 1993 made to Respondent No. 3 that he was transferred from Amravati to Kolhapur on his own request. Besides, it is seen that out of region transfer order made by Respondent No. 3 was sent to the Complainant and a entry to that effect was made by Amravati Principal in his service book. Out of region transfer order as well as entries in service-book categorically says that the Complainant is transferred on his request. It also needs to be emphasised that out of region transfer can be made alone by Respondent No. 3 and there was no necessity to effect Complainant's out of region transfer in due course. Complainant's inaction to protest regarding contents of out of region transfer speaks voluminously. His voluntary statement in representation dated 20th October 1993 that he was transferred on request is fatal for him. All such circumstances, categorically establish that he was transferred from Amravati (Nagpur Region) to Kolhapur (Pune Region) on his request.

16. Advocate his Badadare, canvassed in the second phase that Complainant's seniority when was transferred out of region *i. e.* Kolhapur to Amaravati was protected. In the same fashion, his seniority under Pune Region ought to have been protected. The Complainant ought to have been promoted on the post of Group Inspector by protecting his seniority as Shri Patil and Deshmukh who were juniors to the Complainant are promoted on the post of Group Inspector by order dated 26th November 1993.

17. Shri Pisal, replied that the Complainant was well aware that he will be junior most in the seniority list has specifically ordered in his transfer order dated 8th January 1979. Instructor's seniority list is always Region-wise and there is no separate seniority list of Trade-wise instructors. Accordingly, the Complainant has admitted in his cross-examination. As such, there is no unfair labour practice by any of the Respondents.

18. Governor of Maharashtra has framed Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 4 there of speaks of general principle of seniority. It says that subject to other provisions of these Rules, the seniority of a Government servant in any post or cadre or service shall ordinarily be determined on the length of continuous service therein. Rule 5 thereof is regarding assignment of deemed date of appointment and is exception to general principles of Seniority stated in Rule 4. Its Sub-Rule (7) says that transferred Government servant may be assigned such deemed date of appointment after considering his class, Pay-scales, cadre or service from which he is transferred, the length of his tenure therein and the circumstances leading to his transfer.

19. The Complainant has admitted in his cross-examination that instructor's seniority list is regionwise. The Complainant was transferred out of region from Amravati to Kolhapur on his request. Earlier transfer from Kolhapur to Amravati was not on his request and, therefore, his seniority was protected. But the later transfer was on his request. Eventually he could not rater cannot be foisted upon instructors who were already working under Pune Region. Considering all such circumstances, the Respondent No. 3 as per provision of Rule 5(7) of the

Maharashtra Civil Services (Regulation and Seniority) Rules has rightly directed that the Complainant will be junior most in the seniority list of Pune Region. In other words the Complainant will have to suffer as he himself requested for out of region transfer. Besides, he was made aware in the transfer order itself that he will be junior most in the seniority list. Therefore, now he cannot say that his past services ought to have been protected for the purposes of seniority. Eventually, it cannot be accepted that the Respondents have indulged into an unfair labour practices under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

20. To summaries, Complainant's earlier transfer was for administrative purposes and hence his seniority was protected. He himself applied four out of region transfer (request transfer). Instructor's seniority list is Region-wise. Instructors working under Pune Region cannot be penalised on account of out of region request transfer of the Complainant. Therefore, Respondent No. 3 was well justified in directing that the Complainant will be junior most in the seniority list of Pune Region.

21. In the background of above discussions, I hold that the Complainant has failed to prove commission of unfair labour practice. Accordingly, I answer point No. 1 in the negative and pass following order.

Order

(*i*) The Complaint is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 14th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 141 Of 1999.— Gurupad Basappa Umrani, R. O. Billur, Tal : Jath, District Sangli.—*Petitioner—Versus*—(1) Jath Taluka Dekharekh Sahkari Society Ltd., Jath, Dist. : Sangli, through its Executive Officer. (2) Sangli Zilla Dekhrekh Sahakari Society Ltd., Sangli, through its Chief Executive Officer.— *Respondents.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. D. Kuigade, Advocate for the Petitioner,

Shri R. L. Chavan, Advocate for Respondents.

Judgment

This is a Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 42/1997 by Labour Court, Sangli, whereby relief of reinstatement with continuity of service and full back wages is refused, by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was serving under present Respondent No. 1 (hereinafter referred to as the Taluka Society) as a Secretary. Present Respondent No. 2 is a District Society as control over affairs of Taluka Societies in Sangli District.

3. It is case of the Complainant Taluka and District societies started harassing him on one or other grounds. He then filed Complaint (ULP) No. 216 of 1996 before Industrial Court, Kolhapur and the same is pending. Even then, both Societies continued the harassment. He was unable to bear harassment and mental torture. Eventually, he tendered his resignation on 5th February 1997 to District Society, however, withdrew the same on 18th February 1997 *vide* letter of same date. Therefore, both societies were under statutory obligation to allow him to resume the duties. But he was informed by letter dated 22nd February 1997 that his resignation is accepted with effect from 7th February 1997. Such act of both societies is an unfair labour practice under items (l), (a), (b) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Finally, he prayed for reinstatement with continuity of service and with full back wages.

4. Both societies filed their say at Exh. C-3 contending at the outset that Complaint (ULP) No. 218 of 1996 is pending and, therefore, present complaint is barred by Sec-59 of the M. R. T. U. and P. U. L. P. Act. It is case of both societies that the Complainant committed fraud of substantial amount and then tendered resignation. The Complainant is relieved from services from 7th February 1997 and, therefore, relationship of employer-employee came to an end on 7th February 1997 itself. As such, unilateral withdrawal of resignation is of no legal consequences. Finally, both Societies prayed for dismissal of the complaint.

5. The Labour Court, then framed issued as Exh. O-3 and the parties went to the trial. The Complainant himself examined at Exh. U-12 and produced material documents. In rebuttal, both societies produced documents only.

6. The Labour Court on perusal of evidence and hearing both parties, observed that complaint filed against the Complainant for offences under section 406, 408 and 409 of The Indian Penal Code, is pending before the Judicial Magistrate, Ist Class at Jath. Moreover, a show cause notice is served against the Complainant alleging misappropriation of Rs. 1,44,749 as such, the Complainant Voluntarily resigned to get rid of domestic enquiry and action thereof. Thus, the Labour Court dis-believed Complainant's theory of involuntarily resignation. The Labour Court, further observed that Complainant's voluntary resignation does not amount to termination and, therefore, is not an unfair labour practice. It also held that the Complainant was not entitled to withdraw his resignation as of right, it being a voluntary one. Ultimately, it dismissed the complaint by judgment and order dated 26th May 1999. The same is challenged in this Revision.

7. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of learned Labour Court that Complainant's termination with effect from 7th February 1997 or 22nd February 1997 is not an unfair labour practice, is sustainable in law ?

(*ii*) Whether impugned decision dismissing the complaint is sustainable in law ?

(*iii*) What Order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The Revision Application is allowed.

Reasons

9. It has come on the record that the Complainant filed Complaint (ULP) No. 218/96 against both Societies, before Industrial Court, Kolhapur challenging his suspension. Thus, Cause of action and subject matter of Complaint (ULP) No. 281/96 are different than cause of action and subject matter of the later complaint. Eventually, later complaint is not barred by section 59 of the M. R. T. U. and P. U. L. P. Act, 1971.

10. Before adverting to rival contentions, it needs to be stated that Complainant's Application (Exh. U-2) for interim relief U/s 30(2) of the M. R. T. U. and P. U. L. P. Act to direct both societies to allow him to work, pending decision of main complaint was rejected on 5th June 1997. The Complainant challenged the same before Industrial Court, Kolhapur, *vide* Revision Application No. 283 of 1997 and it was allowed on 2nd April 1998. Both societies challenged Revisional order *vide* Writ Petition No. 1900/98, wherein it was set-aside with a direction to decide original complaint expeditiously.

11. It has further come on record that the Complainant submitted a written application dated 18th February 1997 withdrawing his resignation dated 5th February 1997. In the meantime, he handed over charge to Secretary Shri Unholi. Later on, meeting of Management Committee of District Society took place on 21st February 1997. Resolution No. 3(4) was passed therein. It was resolved that the Complainant has handed over charge of Secretary's post on 6th February 1997 and therefore, resignation is accepted with effect from 7th February 1997 despite Complainant's application dated 18th February 1997 withdrawing the resignation.

12. Shri Kuigade, learned Advocate representing the Complainant vehementaly argued that resignation is an offer to put an end to the relationship between employer and employee and the employee is entitled to withdraw such an offer before it is accepted by the employer. District Society was well aware of withdrawal of resignation by letter dated 18th February 1997. Even then, District Society ignored the same and sanctioned the resignation and that too with retrospective order dated 7th February 1997. In the eyes of law, resignation withdrawn prior to its acceptance is no resignation at all and, therefore, the Complainant is entitled to reinstatement with continuity of service and full back wages. But the Labour Court misdirected itself and entered into area of voluntariness of the resignation or otherwise. Complainant's act of handing over the charge nowhere amounts to acceptance of resignation as resignation can only be accepted by the Appointing Authority and acceptance thereof is to be informed to the Complainant. In support of his arguments, he relied on a decisions of *L. G. Godinho* V/s. *Speaker, Lagislative Assembly, Ga and Ors. repoted in 191997 I CLR at page 545. (Bom. H. C.)* and *A. K. Kenial* V/s. *U. K. Bank reported in 1993 II CLR at Page 529 (Bom. H. C.).* Finally, he submitted that the Revision Application be allowed.

13. Shri Chavan, learned Advocate representing both societies replied that the Complainant himself handed over the charge on 6th February 1997 and thus, the resignation was acted upon. The Complainant was prosecuted by police and misappropriated- Rs. 1,44,749. Therefore, it cannot be accepted that the resignation was involuntarily. Voluntary resignation does not amount to termination. For that end, he relied on in *M/s. J. K. Cotton Speanning and Weaving Mills* V/s. *State of U. P. and Ors. reported in 1990 II CLR page 542 (S. C.)* Finally, he submitted that the Revision Application be dismissed.

14. It is an elementary Principles of law that the resignation is only an offer to put an end to relationship between employer and employee and before such officer is accepted by the employer, the employee is entitled to withdraw it, unless otherwise prescribed rules relating to concerned service. I am fortified in having these observations as per decision in *L. G. Godinho's* case (referred *supra*). Therefore, in this case, the complainant was entitled to withdraw his resignation till the same was accepted in the meeting dated 21st February 1997. Under general law, which is based on sound policy, a resignation will be effective only when it is accepted. Therefore, effect of handing over charge to another Secretary, nowhere amounts to acceptance of resignation tendered by the Complainant. Had it been so, it was not necessary to accept the same again in the meeting dated 19th February 1997. It is an admitted position that the Complainant withdrew his resignation be letter dated 18th February 1997. Thus, it has to be held that his resignation was accepted on 21st February 1997 although it was withdrawn on 19th February 1997. Resignation which is withdrawn before its acceptance cannot be accepted for its withdrawal. Therefore, observations in both decisions relied by Complainant's Advocate (referred *supra*) are clearly acceptable here. In the eyes of law, District Society was nowhere entitled to accept the resignation on 21st February 1997 as it was withdrawn on 19th February 1997. A resignation is effective from the date of its acceptance and therefore, acceptance of Complainant's resignation with retrospective effect *i.e.* 7th February 1997 is also bad in law.

15. It appears that the learned Labour Court misdirected itself regarding voluntariness or otherwise of the resignation. It nowhere considered elementary principles of law that a resignation can legally be withdrawn before its acceptance. Eventually, findings that there is no unfair labour practice by both societies and final order dismissing the Complainant are unsustainable in law. In *J. K. Mills's case* (supra) resignations were not withdrawn and hence observations therein are of no help to both societies. Accordingly, I answer Point Nos. 1 and 2 in the negative.

16. To summarise, District Society's act of accepting resignation on 21st February 1997, despite knowledge of withdrawal thereof by the Complainant on 18th February 1997 is bad in law. The Complainant was entitled to continued in service. Consequently, the Revision Application needs to be allowed by allowing the complaint. Accordingly, I answer Point No. 3 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is allowed

(*ii*) Impugned judgment and order dismissing the complaint is set aside.

(*iii*) The Complaint is allowed.

(*iv*) It is declared that original Respondents 1 and 2 have indulged into unfair labour practice under item l(b), (d) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

(*v*) Original Respondents 1 and 2 are directed to cease and desist from engaging in such unfair labour practice forthwith.

(*vi*) Original Respondent 1 and 2 are directed to reinstate the Complainant on his previous post with continuity of service and full back wages, within one month from to-day.

(*vii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 5th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 165 Of 1997.— Divisional Traffic Officer, Maharashtra State Road Transport Corporation, Sangli.—*Petitioner*—*Versus*—Laxman Bhima Magdum, Plot No. 48, Near Panyachi Taki, Subhashnagar, Miraj, District Sangli.— *Respondents.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. N. Kulkarni, Law Officer for the Petitioner,

Shri K. D. Shinde, Advocate for the Respondents.

Judgment

This is a Revision by an employer-Maharashtra State Road Transport Corporation challenging legality of order passed in Complaint (ULP) No. 256/92 by the Labour Court, whereby he is directed to reinstate an employee with continuity of service and full back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was serving as a driver under present Petitioner (hereinafter referred to as the State Transport Corporation) from 1st May 1979. The Corporation served charge sheet dated 3rd February 1990 upon him alleging that he on 30th December 1989 was found to be carrying 10 liquor bottles illegally. Then an enquiry took place. The Enquiry Officer held that charges of misconduct levelleged against the Complainant are proved. Ultimately, he was dismissed from service with effect from 13th June 1992.

3. The Complainant then failed above complaint on 15th June 1992 alleging that Corporation's Line Checking Squad checked his bus at Ichalkaranji Phata on 30th December 1989, however, nothing incriminating was found and he was advised to proceed further. Even then, he was handed over to authorities of Jaysingpur Police Station. Later on he revealed that he is charged by the Police for offence of carrying 10 liquor bottles without permit. In fact, he never carried the bottles but is falsely implicated by the Police as well as the Corporation.

4. It is further alleged by the Complainant that enquiry is illegal and improper. No charges were proved in the enquiry and findings of the Enquiry Officer are perverse. He therefore, alleged that the Corporation has indulged into various acts of unfair labour practices under item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971. It is also alleged that punishment is shockingly disproportionate.

5. On above averments, the Complainant prayed for requisite declaration of unfair labour practice, consequential directions to reinstate him with continuity of service and full back wages and other consequential reliefs.

6. The Road Transport Corporation filed its written statement at Exh. C-2 and traversed all material allegations made by the Complainant. It contended that Complainant's bus was checked on 30th December 1989 whereby it was found that he was carrying 10 liquor bottles. Accordingly, Police Authority prepared a 'Panchanama.' The misconduct was grave and serious and, therefore, an enquiry was held. Proper opportunity was given to the Complainant to put his case. Findings of the Enquiry Officer are based on evidence and well justifiable. Proved charges of misconduct were serious and therefore, he was dismissed from service. Thus, the Corporation justified its action and finally prayed for dismissal of the complaint.

7. The Labour Court then framed issues at Exh. O-4 and the parties went to the trial. No oral evidence was led by either parties. The Complainant produced some documents of the enquiry, final dismissal order and judgment in Summery Criminal Case No. 649 of 1999 acquitting him from the charge of carrying foreign liquor bottles without licence. In rebuttal, the Corporation produced entire enquiry papers alongwith Complainant's default card.

8. The Labour Court, on perusal of evidence and hearing both parties, observed that Corporation's case throughout is of carrying foreign liquor bottles in driver's cabin but the 'Panchanama' does not say so and, therefore, the Complainant is entitled to benefit of doubt. Eventually, it held that findings of Enquiry Officer are perverse. It then held that punishment of dismissal is not in good faith but colorable exercise of employer's right, for patently false reasons with undue haste and for a misconduct or minor or technical character as well as shockingly disproportionate. Ultimately, it allowed the complaint directing reinstatement in service with continuity of service and back wages by judgment and order dated 3rd March 1997. The same is challenged in this Revision.

9. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of learned Labour Court that findings of Enquiry Officer are perverse, is legal and proper ?

(*ii*) If finding of point No. 1 is in the affirmative, whether the Corporation is entitled to lead evidence to substantiate its charges ?

(*iii*) Whether punishment imposed is shockingly disproportionate considering that the complainant is relieved from service on 29th August 2000 as found to be medically unfit ?

(*iv*) What Order ?

10. My findings, on above points, are as under :—

(*i*) No, Findings of Enquiry Officer are well justifiable.

(*ii*) Does not survice.

(*iii*) Yes.

(*iv*) The Revision Application is partly allowed.

Reasons

11. It needs to be stated at the outset that the Complainant filed an application (Exh. U-2) for interim relief under section 30(*2*) of the M. R. T. U. and P. U. L. P. Act, 1971 before Labour Court. It was allowed on 10th February 1993 and the Corporation was directed to allow the Complainant to join duties till final disposal of main complaint. The Corporation challenged said order *vide* Revision Application No. 61/93 but it was dismissed on 16th March 1995. In the meantime, the Corporation allowed the Complainant to join the duties *w. e. f.* 25th May 1993. Thereafter, the Complainant was found to be medically unfit on 29th August 2000 and then discontinued by the Corporation. Thus, the Complainant worked from 25th May 1993 to 29th August 2000 as a driver. Advocate for the Complainant has produced Complainant's requisite unfit certificate in this Revision Application, with list Exh. U-5.

12. Shri A. N. Kulkarni, learned Law Officer of the Corporation vehemently argued that the Labour Court misconstrued Corporation's case. It is specifically alleged in the Charge sheet that the Complainant was carrying foreign liquor bottles which were found to be stored above diesel tank as well as in his cabin. Officer's of the Line Checking Squad took the bus to the Police Station and Police prepared a 'panchanama' of 6 bottles found between diesel tank and the chassis. Thereafter, Art 'A' Mechanic Shri Mohite was sent to bring the bus and he drove the bus to some distance. Thereafter one person come near his cabin and asked to deliver liquor bottles concealed under the foot-rest. But the facts still remains that 6 bottles were found by the Police above the diesel tank and those were seized under 'panchanama'. But, labour Court has nowhere considered above facts but rather ignored. Statement of Shri Mohite is on record.

Charge sheet nowhere says that liquor bottles were found in cabin only. On the contrary, it is specifically stated in charge sheet that the liquor bottles were found on diesel tank and in cabin. Therefore, impugned finding that findings of the Enquiry Officer are perverse is altogether unsustainable in law. Observations made by the Labour Court are altogether in ignorance of material facts. He further added that, in any case, the labour Court ought to have extended opportunity to the Corporation to substantiate its charges before Court of law as relief thereof is specifically claimed in paragraph No. 9 of the written statement (Exh. C-2).

13. Shri Shinde, learned Advocate representing the Complainant replied that finding of fact recorded by the Labour Court cannot be set-aside.

14. Learned Labour Court has observed that the Corporation's case throughout is carrying liquor bottles in driver's cabin but such is not the fact at all. It is specifically alleged in the charge sheet that the Complainant was found to be storing liquor bottles above the diesel tank and in the cabin. Thus, the learned Labour Court has misconstrued Corporation's case. Besides, 'panchanama' chategorically says that 6 liquor bottles were found be stored above diesel tank and below the chassis. Statement of Art. A Mechanic Shri Mohite is on record. Statements of some passengers also support the Corporation. In addition, Complainant's own statement recorded on the spot says that 6 bottles were found be stored above diesel tank. In such circumstances, the only possible conclusion is that 6 bottles were found to be carried. As regards complicity of the Complainant, he is the only person who can be benefited by carrying liquor bottles and that too by concealing in odd place. In such circumstances, it cannot be accepted that findings of the enquiry officer are based on no evidence and are perverse. On the contrary, the inferences is otherwise. Learned Labour Court has misconstrued Corporation's case and ignored material documents on record and has recorded altogether unjustifiable finding. As such, the same is neither legal nor proper and is required to be set-aside. Accordingly, I answer Point No. 1 in the negative and hold that finding of the Enquiry Officer are well justifiable.

15. In the light of above finding of point No. 1 in the affirmative, it is not necessary to permit the Corporation to lead evidence afresh to substantiate its action. As such, Point No. 2 does not survive. I answer Point No. 2 accordingly.

16. It has come on the record that the complainant is discontinued from service from 29th August 2000 as found to be medically unfit. Corporation's learned Law Officer also accepted such fact.

17. Corporation's Law Officer argued that carrying liquor bottles is a serious misconduct and, therefore, punishment of dismissal is not shockingly disproportionate. He further added that the learned Labour Court was much stayed away by virtue of interim relief granted by labour Court and extended misplaced sympathy to him.

18. Shri Shinde, learned Advocate representing the Complainant argued that this is the first and last misconduct of the Complainant. There is no major misconduct to his credit. It is not the case of the corporation that the Complainant is dismissed for dishonesty. Accordingly it is specifically stated in the dismissal order. It is not a case of fraud or misappropriation. Besides, Complainant's record after temporary reinstatement till found to be medically unfit on 29th August 2000 medical ground is perfectly clear. In such circumstances, punishment of dismissal is certainly shockingly disproportionate.

19. I perused Complainant's default card. There are four misconducts to his credit but all of them are marginal. He is not terminated on the ground of dis-honesty.

20. In addition, now he is already discontinued from service from 29th August 2000 as found to be medically unfit. Moreover, he has worked honestly from 25th May 1993 till 29th August 2000. Thus, proved misconduct appears to be first and last one. In such circumstances, punishment of dismissal is certainly disproportionate. Considering peculiar facts and circumstances of this, in my judgment reduction of pay by one stage with cumulative effect for the purpose of gratuity and refusal of back wages from the date of dismissal till 25th May 1993 will be proper and will meet the ends of justice. Accordingly I answer Point No. 3 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order allowing the complaint fully is set aside and is modified.

(*iii*) The Complaint is partly allowed.

(*iv*) It is declared that the Respondents Corporation is engaged in unfair labour practice while dismissing the Complainant from service.

(*v*) The Respondent - Corporation is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*vi*) The Respondent - Corporation is directed to reinstate the Complainant with continuity of service by reducing his pay scale by one stage with cumulative effect for the purposes of gratuity, by paying wages from 25th May 1993. The Complainant is entitled to back wages for the period from 13th June 1992 to 25th May 1993.

(*vii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur
Camping at Sangli.

Sangli,
Dated the 16th February 2002.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 17 OF 2002.— Shri Datta Sahakari Sakhar Karkhana, Ltd, Asurle Porle, Tal. Panhala, District Kolhapur.—*Petitioner.*—*Versus*—(1) Shri Mahadeo Ramrao Patil, R/o. Asurle, Tal. Panhala, District Kolhapur. (2) Shri Udaysing Fatesing Sarnobat, R/o. Asurle, Tal. Panhala, District Kolhapur. (3) Shri Abso Hambirrao Jadhav, R/o. Asurle, Tal. Panhala, District Kolhapur. (4) Shri Sampat Rangrao Patil, R/o. Asurle, Tal. Panhala, District Kolhapur.— *Respondents.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri V. D. Potnis, i/by A. S. Nevagi, Adv. for the Petitioner.

Shri D. S. Joshi, Advocate for the Respondents.

Judgment

This is a Revision by original Respondent Sugar Factory challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 301/2001 by Labour Court, Kolhapur whereby he is directed to allow original Complainants seasonal permanent employees to work on their previous posts, till disposal of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) are seasonal permanent employees of present Petitioner (hereinafter referred to as the Factory). The Sugar Factory is covered by provisions of the BIR Act. It's crushing season started on 19th October 2001. Eventually, the employment of seasonal permanent employees also commenced. The Sugar Factory gave general notice of commencement of crushing season.

3. It is case of the Complainants that they visited the Sugar Factory on 19th October 2001 to join duties but were not allowed. They then met the Managing Director and the Time Keeper for allowing them to join the duties but were not allowed for no reasons. They, ultimately informed Assistant Commissioner of Labour on same date but it was of no use. It is alleged by the Complainants that they are orally terminated by not allowing them to join the duties. There was dispute in the Board of Directors. Present Majority of Board of Directors construed that they (Complainants) belong to opposite group and hence purposely did not allow them to join the duties. According to the Complainants, therefore, the sugar Factory has indulged into unfair labour practice under items 1(*a*), (*b*), (*d*), (*e*) and (*f*) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. They filed an application (Exh. U-2) U/s 30(*2*) of the M. R. T. U. and P. U. L. P. Act claiming interim temporary reinstatement.

4. The Sugar Factory filed its say (Exh. C-18) to Interim Temporary Application and Written statement (Exh. C-20) and traversed all material allegations made by the Complainants. It contended that a notice was published in local News Paper as well as on Notice Board of the Factory as per recommendations of Wage Board and provisions of settlement and as per the custom, before commencement of the crushing season, inviting seasonal permanent employees to enroll their names for ensuing crushing season. The notice was displayed on 6th October 2001 and seasonal permanent employees were supposed to register their names till 10th October 2001 and report to work. But the Complainants neither registered their names nor reported to work. Eventually, employment was offered to others, alternate arrangement was made and crushing season commenced. Therefore, the Complainants were not employed. It is further case of the Sugar Factory that none of the Complainants offered themself for employment and, therefore, were not employed. They are entitled to employment in the next crushing season. As such, there is no termination at all. Consequently the complaint is not maintainable. The Sugar Factory then prayed that an issue of maintainability of the complaint be decided as preliminary one. Finally, it prayed for rejection of interim application.

5. Both parties led documentary evidence and filed affidavits in support of their contentions. The Labour Court, on perusal of evidence and hearing the parties, *prima facie* held that the Complainants reported for duty but were not allowed to join, though are seasonal permanent employees, and hence it is *prima facie* an unfair labour practice under item 1(*b*) and (*f*) of Sch. IV of the Act. It further held that balance of convenience lies in favour of the Complainants and they will suffer irrepairable loss if interim relief is refused. Ultimately, it allowed interim Application (Exh. U-2) and directed the Sugar Factory to allow the Complainants to work on their previous posts temporarily till decision of main complaint by order dated 29th January 2001. The same is challenged in this revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order granting interim relief in favour of the Complainants, is justifiable ?

(*ii*) What Order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is rejected.

Reasons

8. It is not in dispute that the Complainants are working as seasonal permanent employees since about 15 years. It is also not in dispute that the Sugar Factory displayed its notice dated 6th October, 2001 inviting seasonal permanent employees to enroll their names.

9. Shri Potnis, Learned Advocate representing the Sugar Factory argued that the Complainants never registered their names as per the Public Notice nor offered themselves for employment. As such, they were not employed. All other seasonal permanent employees are allowed to work and there is no grudge against the Complainants only. Procedure of enrolling names prior to Commencement of crushing season is in force since many years and the Complainants were aware of the same. However, did not register their names and hence alternate arrangement was made. Thus, there is no termination at all and item 1 of Sch. IV of the Act is not attracted. But the Labour Court erred in *prima facie* holding that there is oral termination.

10. Shri Joshi, Learned Advocate representing the Complainants replied that procedure of registering the names prior to commencement of crushing season is no where recognised by Wage Board Authority or Standing Orders. In fact, the Complainants visited Sugar Factory's get on 19th October 2001 for resuming the duties but were not allowed to any reason. Accordingly, they informed in writing to the Managing Director as well as Assistant Commissioner of Labour and the Union. Shift Report dated 19th October 2001 marks Complainant No. 3 as absent. In Shift Reports dated 24th October 2001 and 29th October 2001 other complainants marked absent. On the other hand, overtime wages are paid to other employees. All such facts clearly establish that the Complainants offered for employment but employment was refused. Assuming for a moment that the Complainant had enroll their names as per public notice, it no where means that they have lost the employment as they are admittedly seasonal permanent employees. Therefore, the Labour Court has rightly granted the interim relief.

11. Documents produced on record like written applications to the Managing Director are of 19th October 2001. A complaint to the Assistant Commissioner of Labour and Warna Sahakari Sakhar Karkhna Kamgar Sangh, *prima facie* establish that the Complainants offered themselve on 19th October 2001 for work. Alleged direction of Wage Board or provision in settlement that enrollment before the commencement of crushing season is must and unenrollement losses right of employment, are no where brought on record. Consequently, bare pleadings that the Complainants failed to enroll their names and, therefore, lost right of

employment cannot be accepted. On the contrary, when they are seasonal permanent employees, offered for employment on 19th October 2001 it was statutory obligation of the Sugar Factory to employ them. Alleged reason of alleged non-employment is put forth for the first time in the written statement. In all fairness, the Sugar Factory ought to have replied in October, 2001 itself that name were not enrolled and, therefore, the Complainants are not entitled to be employed in present commencing crushing season.

12. In any case, documents produced on record, *Prima Facie,* show that the Complainants offered for employment on the first date of the crushing season *i.e.* 19th October 2001 itself. The very fact that their names are stated in the shift report but are marked absent, *prima facie* shows that they were presumed to be on duty on respective date. Advocate Potnis tried to canvass that Shift Reports are fabricated, however, *prima facie,* such contention is not acceptable considering Complainant's offer to employ themself on 19th October 2001 itself. Therefore, *prima facie,* it cannot be accepted that the Complainants did not offer for themself for employment and then were not employed.

13. In the background of above discussions, I find that *prima facie* finding of fact recorded by the Learned Labour Court is well justifiable. In addition, the sugar Factory will not suffer loss if the Complainants are employed, as, *prima ficie,* the Sugar Factory has employed workmen on over-time. *Prima facie,* the Complainants are entitled to employment. As such, balance of convenience lies in their favour and they will suffer irrepairable injury if interim relief is refused.

14. To summarise, impugned order is well justifiable and no where smells of arbitrariness or perversity. On the contrary, there is every substance in its reasoning. As such, no interference is called for. Accordingly I answer Point No. 3 in the affirmative and pass the following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 18th February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINANT (ULP) No. 352 of 1994.— Vilas Appa Bedage, C/o.–General Kamgar Sangh (INTUC), Ichalkaranji, 10/16, Central Building, Ichalkaranji—*Complainant Versus* The Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji— *Respondent.*

In the matter of Complaint u/s. 28(*1*) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Smt. N. A. Ramtirthakar, Advocate for the Complainant.

Shri R. L. Chavan, Advocate for the Respondent.

Judgment

This is a Complaint purported to be under section 28(*1*) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Complainant is serving as a driver under the Respondent Ichalkaranji Municipal Council's another driver Shri Throat was on leave on 21st December 1993. Therefore, the Complainant was directed to driver water-tanker bearing MHL 4308. Accordingly, the Complainant drove the tanker and parked the same in the garage after end of his duty-hours. Council's Chief Officer then served chargesheet dated 24th February 1994 upon him alleging that he drove the tanker recklessly resulting into brakage of suspension spring plates. The Council then directed him to make good damage of Rs. 1450 and further imposed fine of Rs. 10 *vide* order dated 10th August 1994.

3. The Complainant then filed above complaint on 5th September 1994 alleging that he drove the water tanker for 4 to 6 k.mtrs. only and then parked the same in the workshop as usual and left. He never drover the tanker for 46 to 50 k.mtrs. as alleged. The tanker was not checked when parked in the garage. As such, he is not responsible for the damage. In addition, he was neither served with chargesheet nor an enquiry took place and no opportunity was given to defend himself. According to the Complainant, therefore, punishment imposed is contrary to the principles of natural justice and harsh one. Council's such act is an unfair labour practice. Eventually, he prayed for requisite declaration of unfair labour practice setting aside punishment order and other consequential reliefs.

4. Council appeared through its Advocate but did not file its written statement.

5. Now, following points arise for my determination :—

(*i*) Does the Complainant prove that the Respondent Council has indulged into an unfair labour Practice under items 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971 ?

(*ii*) What Order ?

6. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Complaint is dismissed.

Reasons

7. The Complainant has produced report of another driver Shri Thorat, copy of chargesheet dated 24th February 1994 served upon him, punishment order dated 10th August 1994 and copy of log-book of tanker with list Exh. U-6.

8. Smt. Ramtirthakar, Learned Advocate representing the Complainant argued that no regular enquiry regarding Complainant's alleged misconduct took place and the punishment is imposed unilaterally. In fact, the Complainant never damaged suspension spring plates. Had there been a damage, the vehicle could not be driven. Besides, no opportunity of hearing board was given to the Complainant. As such, the punishment is unsustainable in law.

9. Shri Chavan, Learned Advocate representing the Respondent Council replied that enquiry is necessary when punishment of reversion to a lower post or removal or dismissal form service is to be given, as per section 79(*3*) of Maharashtra Municipalities Act. The Complainant was served with chargesheet, gave an *explanation* but the same was found to be unsatisfactory. Driver Thorat checked the tanker on 22nd December 1992 at 5-30 a.m. and noted that five suspension spring plates were broken. Thus, the Complainant alone damaged the Plates and hence is punished rightly.

10. Section 79 of the Maharashtra Municipalites Act employers the Appointing Authority of the Council to punish its officers or servants. Its sub-section (*3*) provides that no officer or servant shall be reduced to a lower post or removed or dismissed unless he has been given reasonable opportunity of show cause against such reduction, removal or dismissal. Thus, opportunity of hearing to an employee is necessary for these three punishments only. Other punishments like given to the Complainant can be imposed without elaborate enquiry.

11. In the present case, the Council has served a chargesheet upon the Complainant and sought his *explanation*. The *explanation* was found to be unsatisfactory and then he was punished. Thus, it is clear that the Council has observed principles of natural justice while imposing the punishment.

12. Admittedly, the Complainant drove the tanker on 21st December 1993. It is no-body's case that the tanker was driven by other driver than the Complainant on 21st December 1993. Report of driver Shri Thorat is produced by the Complainant himself. Shri Thorat has reported about the damage to Workshop Superintendent. Thus, the Complainant alone droven the tanker on 21st December 1993. The plates were found to be damaged on 22nd December 1993. Thus, the proponderance of probabilities categorically established that the Complainant alone damaged the plates. I, therefore, find that the Council has rightly ordered recovery of damage from his wages.

13. In the light of above discussions, I find that the Corporation is well justified in taking the impugned action against the Complainant. It has rightly found the Complainant guilty and imposed the requisit punishment. As such, no unfair labour practice is proved. Accordingly, I answer Point No. (*i*) in the negative and pass the following order :—

Order

(*i*) The Complaint is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 21st February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

BEFORE SHRI C. A. JADHAV, MEMBER

REVISION APPLICATION (ULP) No. 122 Of 1992.— Divisional Controller, M. S. R. T. Corporation, Sindhudurga Division, Kankavali.—*Petitioner*—*Versus*—Shri Ajit Vitthal Manjarekar, At Post Talawade(Gadgewadi), Tal. Sawantwadi, Dist. Sindhudurga.— *Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri M. S. Topkar, Advocate for the Petitioner,

Shri M. G. Badadare, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 80 of 1990 by the Labour Court, Kolhapur whereby he is directed to reinstate his employee driver with continuity of service and full back wages holding that findings of the Enquiry Officer are perverse.

2. Admittedly, present Respondent (hereinafter referred to as the "Complainant") was serving under present Petitioner (hereinafter referred to as the "State Road Transport Corporation") as a driver from 22nd May 1988. He was driving S. T. Bus on 1st November 1989 from Malvan to Belgaum. The State Road Transport Corporation served Chargesheet dated 11th November 1989 on him alleging misconducts under clauses 11, 15, 22 and 39 of its Discipline and Appeal Procedure. It was alleged that he drove S. T. Bus on 1st November 1989 on Sawantwadi route in over-speed (Clause 39), in violation of administrative orders (Clause 22) and caused wilful damage to vehicle or property of the Corporation (Clause 15) and committed gross negligence (Clause 11), as a result of which, a moped rider coming on opposite side, died on the spot. The Complainant denied the charges and then enquiry took place. The Enquiry Officer on completition of enquiry held that all charges levelled against the Complainant are proved. Consequent upon such findings, the Complainant was terminated with effect from 2nd April 1990. It is case of the Complainant that the enquiry was, in fact a farce. Complainant witnesses were not examined. The Enquiry Officer acted as a Prosecutor cum Judge. Rules of natural justice were not followed in the enquiry. As such, findings of the Enquiry Officer are perverse. The incident was totally attributable to the moped-rider as he was driving the moped in a rash and negligent manner.

3. It is further alleged, in the alternate, that contributory negligence of moped rider ought to have been considered by the Corporation. Alleged misconduct is of a minor and/or technical nature and, therefore, punishment of dismissal is shockingly disproportionate.

4. On these averments, the Complainant alleged unfair labour practice under items 1(a), (b), (d), (f) and (g) of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971. Consequently, he prayed for reinstatement in service with continuity of service and full back wages.

5. The Complainant also made an application under section 30(*2*) of the M. R. T. U. and P. U. L. P. Act, whereon an *ex-parte* order was passed on 10th April 1990 directing the S. T. Corporation to allow him to join the duties and with further orders of show cause notice.

6. The State Transport Corporation file written statement at Exh. 10 and traversed all material allegations made by the Complainant. It contended that the Complainant drove the S. T. Bus in over-speed causing death of a moped rider. Consequently, due enquiry was held wherein all charges came to be proved. Findings of the Enquiry Officer are based on evidence and/or not perverse. However, if those are held to be perverse then it may be permitted to lead evidence to substantiate its action. Proved charges are grave and serious and punishment imposed is legal and proper. Finally, it prayed for dismissal of the Complaint.

7. The parties then went to the Trial. The Complainant filed pursis (Exh. U-14) admittingality and propriety of the enquiry but did not lead oral evidence. The Corporation produced entire enquiry papers but did not lead oral evidence.

8. Learned Labour Court, on perusal of documentary evidence, produced on record and hearing both parties, held that conclusions of the Enquiry Officer are not positive on the basis of evidence brought before him. It then held that the Corporation has engaged in unfair labour practice and directed reinstatement with continuity of service and full back wages, *vide* judgment and order dated 22nd June 1992. The same is challenged in this Revision.

9. I heard both Advocates, considering rival submissions, following points arise for my determination :—

(*i*) Whether findings of the Labour Court that findings of the Enquiry Officer are perverse, is sustainable in law ?

(*ii*) What Order ?

10. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

11. It needs to be stated at the outset that interim order passed on Complainant's Application (Ex. U-2) was in force till disposal of the Complaint. It merged into final order as the Complaint was allowed. Thus, the Complainant is in employment till to-day. Impugned judgment and order is not stayed in this Revision Application.

12. Shri Badadare, learned advocate representing the State Transport Corporation vehementaly argued at the outset that sophisticated rules under the Evidence Act are not applicable in a domestic enquiry. If the findings of Enquiry Officer on weighing probabilities is accepted or probable, then the same cannot be branded to be perverse. Labour Court or Industrial Court has no jurisdiction to set in judgment over decision of the Enquiry Officer. Labour Court scrutinised findings of the Enquiry Officer presuming that misconduct is to be proved beyond reasonable doubt. The moped was dragged for about 19 feets and such fact is well established by the 'Panchanama'. Eventually, it can be easily accepted that the Complainant was driving the S. T. bus in over-speed. As such, observations in impugned judgment that conclusions of the Enquiry Officer are not plausible, are totally wrong.

13. Shri D. N. Patil, learned Advocate representing the Complainant replied that Complainant was on left side of the road, applied breaks on seeing moped rider but the rider himself dashed the bus. Therefore, the Complainant cannot be held responsible for the incident.

14. It needs to be stated that misconduct under clause 39 is "over speed by a driver". Likewise, clause 11 is "gross negligence". Thus charge against the Complainant is mainly of over-speeding with gross negligenc and certainly short of "rash and negligent" act. Assuming for a moment that the moped rider was negligant, the fact that he was dragged about 19 feets speaks voluminously. If the Complainant's bus would have been in a normal speed, then the moped driver would not have been dragged for about 19 feets. Thus, the Panchanama is well indicative of the fact that the bus was in over speed and the Complainant was negligent. Although there was a curve on the road, the Complainant ought to have in normal speed so as to avoid possibility of any mishap on the curve. Although, the Complainant applied the breaks, break marks for about 19 feets would not be possible if he was in a moderate speed. The Complainant has admitted in the enquiry that the 'Panchanama' was prepared as per situation on the spot. Therefore, it was not necessary to examine the 'panchas'. According to the Complainant he controlled the speed on seeing moped rider. But if such was the case, then the moped rider would not have been dragged for 19 feets. Thus, findings of the Enquiry Officer are based on evidence and well commensurate with proportionate of probabilities. It appears

that learned Labour Court misdirected itself on the assumption that misconduct is to be proved beyond doubt. No doubt, there appears to be contributory negligence of the moped driver. However, the fact of over-speeding is well established. I, therefore hold that finding of learned Labour Court that Enquiry Officer's finding is perverse is unsustainable in law. Accordingly, I answer Point No. 1 in the negative holding that findings of the Enquiry Officer are legal and proper.

15. Advocate Shri Badadare, in the second phase, argued that moped rider has died on the spot, proved misconduct is grave and serious and, therefore, punishment of dismissal is well justifiable.

16. Advocate Shri D. N. Patil replied that in any case moped riders' contributory negligence cannot be ignored. Complainant's past record is absolutely good. He is in employment as per interim orders of the Labour Court and working satisfactorily till to-day. Entire past record needs consideration while imposing punishment.

17. At the costs of repetition, I say that moped rider's contributory negligence cannot be ignored at any costs. Had the moped rider on proper track, there was no possibility of his colliding with the bus. In order words, Complainant's over-speeding itself is not direct and proximate cause of his death. His past record as well as record after interim temporary reinstatement is good. Considering all such circumstances, punishment of dismissal is unwarranted. Suffice to say that the Corporation is at liberty to impose proper punishment other than of dismissel considering moped rider's contributory negligence. Eventually, the Revision Application needs to be allowed partly by modifying impugned order.

18. Finally, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Declaration by Labour Court regarding engagement in unfair labour practice and directions thereof is maintained.

(*iii*) The State Transport Corporation is at liberty to impose proper punishment other than dismissal.

(*iv*) The parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th January 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

BEFORE SHRI C. A. JADHAV, MEMBER

COMPLAINT (ULP) No. 212 Of 2000.— Shri Vijay Dnyanu Patole, At and Post Ghunki, Tal. Hatakanagale, Dist. Kolhapur. —*Complainant—Versus*—The Agricultural Produce Market Committee, Vadgaon (Peth), Tal. Hatakanagale, Dist. Kolhapur, through its Chairman and Secretary.— *Respondents.*

In the matter of : Complaint U/s. 28(1) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri D. S. Desai, Advocate for the Complainant,
Shri R. V. Sirdesai, Advocate for the Respondents.

Judgment

This is a Complaint purported to be under section 28(1) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Respondent Committee is constituted under The Maharashtra Agricultural Produce Marketing Act. Committee's Secretary appointed the Complainant as a peon in Committee's Office for the period from 6th October 1997 to 31st December 1997 on fixed salary of Rs. 1500 per month, *vide* order dated 30th September 1997 Office order says that the Complainant is appointed temporary for 3 months. Later on, the Complaint is again appointed as peon for the period from 5th January 1998 to 31st March 1998 on fixed salary of Rs. 1500 per month, by another order dated 1st January 1998. He was further appointed for the periods from 1st September 1998 to 28th February 1999 and 1st March 1999 to 31st August 1999, by two separate orders.

3. It is case of the Complainant that though his appointment orders contain a specific period, he was employed continuously by series of appointment orders without any physical break. Moreover, he was appointed on clear vacant post to do work of perennial nature. Thus, he has put in 'continues service' from 6th October 1997 onwards. He, therefore, has attained status and privileges of permanent employee but is employed as temporary with the object to deprive him benefits of permanency.

4. It is alleged by the Complainant that he is working on clear vacant post and doing work of perennial nature but no wages are paid like paid to employees working as clerks. As such, it amounts to victimisation or partiality to one set of workers, regardless of merits.

5. It is further case of the Complainant that he belongs to schedule caste and the post on which he was appointed, is reserved for a candidate of schedule caste. He was appointed on recommendations of Social Welfare and Employment Exchange Office, Kolhapur. Besides, two posts of peons are vacant and one is reserved for a candidate of Schedule caste. He has worked for more than 240 days continously each year and thus attained status of a permanent employee, as per provisions of the Industrial Employment (Standing Orders) Act, as well as Industrial Disputes Act.

6. It is further alleged by the Complainant that he is deprived of getting statutory benefits like salary as per approved pay scale, leave with wages, bonus etc. as per Model Standing Orders. But no such benefits are extended to him. Committee's such act is an unfair labour practices under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

7. On above averments, the Complainant has prayed for requisite declaration of unfair labour practices, directions to the Committee to award permanency to him and monthly wages as per approved pay scale and on par with other clearks and other consequential reliefs.

8. The Committee filed its written statement at Exh. C-1 and traversed some of the material allegations made by the Complainant. It contended at the outset that the Complainant filed Complaint (ULP) No. 280 of 2000 in the Labour Court, Kolhapur alleging unfair labour practice under item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, and therefore, this Complaint is barred by Section 59 of the M. R. T. U. and P. U. L. P. Act, 1971.

9. According to the Committee, it can employ permanent employees only after permission of the Director of Marketing of Maharashtra State. It can employ employees on temporary basis to meet temporary requirements. The Complainant was never appointed on vacant post and hence is not entitled to permanency by virtue of working for continuous service of 240 days. The Complainant will be considered for permanent employment as and when vacancy arises and the Director of Marketing, Maharashtra State permits. Eventually, the Complainant is not entitled to equal wages and benefits like of permanent peon. Finally, it prayed for dismissal of the complaint.

10. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether complaint is barred by provision of section 59 of the M. R. T. U. and P. U. L. P. Act ?

(*ii*) Does the Complainant prove that the Committee continued him as temporary with the object of depriving him of the status and privileges of a permanent employee ?

(*iii*) Does the Complainant further prove that he is entitled to wages at par with other permanent clerks ?

(*iv*) Does the Complainant further prove that the Committee has indulged into unfair labour practices ?

(*v*) What Order ?

11. My findings, on above points, are as under :—

(*i*) No

(*ii*) No

(*iii*) Yes.

(*iv*) Yes.

(*v*) The Complaint is partly allowed.

Reasons

12. The Committee has admitted in its written statement (Exh. C-1) that the Complainant is an employee. It is further stated in paragraph No. 2 of the written statement that provisions of the M. R. T. U. and P. U. L. P. Act and I. D. Act are applicable to the Committee. Thus, it is needless to state that the Committee is 'an industry' as defined under section 2 (*j*) of the I. D. Act and the Complainant is an employee as defined under Sec. 3(*5*) of the M. R. T. U. and P. U. L. P. Act. Eventually, the complaint is maintainable.

13. The Complainant has produced four appointment orders, with list Exh. U-4. He has also produced approved pay scale of peon and details of staff schedule of the Respondent Committee.

14. None of the parties led oral evidence but relied upon documentary evidence.

15. Approved Staff Schedule (Produced with list Exh. U-4/6) says that there are four sanctioned posts of peon out of which two permanent peons are working. One temporary peon is appointed and one post of peon is vacant.

16. Office order appointing the Complainant says that he is temporary appointed on the post of peon. It is further stated in those orders that he will not be entitled to wages and allowance like paid to permanent employees.

17. I must state here that two other Complainants have filed Complaint (ULP) Nos. 210 and 211 of 2000 against the Committee on identical grounds. The Committee has produced material documents with list Exh. C-6 in Complaint (ULP) No. -210 of 2000. Both Advocates submitted that those documents be perused. Those documents say that the Marketing Director replied on 23rd October, 1997 that expenditure of the Committee is more that the prescribed percentage of income and, therefore, no additional posts are sanctioned. The Committee send letters seeking permission to fill up vacant posts. There is nothing on record to show that the Director of marketing then replied to the letter or refused the permission.

18. Shri Desai, learned Advocate representing the Complainant vehementaly argued that the Complainant is still in service. It implies that he is doing work of perennial nature. There is no reason to keeping him temporary for years together. The Marketing Director has no absolute authority superior than the provisions of law. Model Standing Orders are applicable to the Committee and, therefore, the Complainant has attained a status and privileges of permanent employee. The Complainant is doing work of perennial nature while on duty on vacant post and so he is entitled to permanency and equal wages on completion of 240 days service.

19. Shri Sirdesai, learned Advocate, representing the Committee replied that the Committee cannot appoint permanent employees without permission of the Director of Marketing under Rule 100(5) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967.

20. Section 59 of the M. R. T. U. and P. U. L. P. Act produced that if any proceeding in respect of any matter falling within the perview of said Act, is instituted under said Act, then no proceeding shall be entertained in respect of same matter under the I. D. Act or B. I. R. Act and *Vice-a-versa*. In the present case, the Complainant has filed Complaint under the M. R. T. U. and P. U. L. P. Act on the ground of apprehended termination before the Labour Court. There are no simultaneous proceedings regarding same matter under the M. R. T. U. and P. U. L. P. Act, I. D. Act or B. I. R. Act. As such, the complaint is nowhere barred by section 59 of the M. R. T. U. and P. U. L. P. Act. Accordingly I answer point No. 1 in the negative.

21. It is not in dispute that the Respondent Committee is constituted under Maharashtra Agricultural Produce Marketing (Regulation) Act and certainly covered by the provisions therein and Rules made thereunder.

22. Section 35(*1*) of above Act speaks about powers of Marketing Committee to employ staff. It says that a Marketing Committee may employ necessary employees provided all posts other than of a Secretary shall be created only with a prior approval of the Director.

23. Advocate Shri Desai, therefore, canvassed that permission under Rule 100(5) is not necessary and parent Section *i. e.* Section 35(1) of the Act will prevail. He further relied on a decision in *Burroughs Welcome (I) Ltd.* V/s. *D-H Ghosle and Ors. reported in 2001(2)m Mah. L. J. at page 54.*

24. Section 35(*3*) of above Act provides that powers conferred on a marketing Committee under Section 35*(1)* and *(2)* shall be exercised subject to any Rules which may be made in that behalf by the State Government. Thus, Sub-Section *(3)* is in a nature of provision. State Government has made rules in exercise of the powers conferred by Sub-Sec. (*1*) and (*2*) of Sec. 60 of the above Act. Rule 100(5) says that no appointment to any post for a period not exceeding 6 months shall be made except with previous approval of the Director. It has come on the record that the Respondent-Marketing Committee has time and again sought permission of the Director for respective appointments. Eventually, it cannot be accepted that it has continued the Complainant as temporary one with the object of depriving him of the status and previleges of a permanent employee. In short, Rule 100(5) has created a complete embargo on powers of the Marketing Committee to create new posts except with the Sanction of the Director. Therefore, observations in *Burough Welcome(I) Ltd.* V/s. *D. H. Ghosale's* case (referred *supra*) are of no help to the Complainant. Consequently, I answer Point No. 2 in the negative.

25. The Complainant is working as a peon with effect from 6th October 1997. However, he is appointed from time to time by various orders. Marketing Committee's staff pattern says that one post of a peon is still vacant. Thus, it is clear that the Complainant is doing work of perennial nature. In the light of dictum of Honourable Apex Court in *Food Corporation of India* V/s. *Shyamal Chatterjee* reported in *2000 SOL Case No. 554,* the Complainant is entitled to wages at par with other permanent peons. The marketing Committee has simply pleaded that there is no unfair labour practice on its part in paying Rs. 1500/- per month to the Complainant. Honourable Apex Court has held in above decision that casual workers working in same Department doing the same work, are entitled to equal wages. As such, non-payment of equal wages is an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. I answer point Nos. 3 and 4 accordingly.

26. In the light of above discussions and findings, the complaint needs to be allowed partly directing the Respondent - Marketing Committee to pay equal wages to the Complainant.

27. In the result, I pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that the Respondent- Marketing Committee has engaged in unfair labour practice under item 9 of sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

(*iii*) The Respondent - Marketing Committee is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) The Respondent is directed to pay wages to the Complainant at par with other permanent peons, from 1st February, 2002.

(*v*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 14th February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA
AT KOLHAPUR

REVISION APPLICATION (ULP) No. 262 OF 1998.—The Sub-Divisional Officer, Land Development Sub-Division No. 2, At Post Khed, Dist. Ratnagiri.—*Petitioner.*—*Versus*—Shri Ramesh Sursing Devare, Fage Wireman Chawl, At Post Bharane, Tal. Khed, District Ratnagiri.—*Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

Coram.— Shri C. A. Jadhav, Member.

Advocates.— Shri D. J. Mangsule, Asstt. Government Pleader for the Petitioner.

Shri A. M. Patwardhan, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent challenging legality of judgment and order passed in Complaint (ULP) No. 256 of 1992 by the Labour Court, Kolhapur, where by he is directed to reinstate original Complainant with continuity of service and 50% back wages from date of presentation of the Complaint.

2. Admittedly, present Respondent (hereinafter referred to as " the Complainant ") started working under present Petitioner (hereinafter referred to as " the Respondent Sub-Divisional Officer ") as a driver from 27th July 1989 on daily wages.

3. The Complainant filed above complaint on 22nd June 1992 contending that no written appointment order was issued to him. He worked till 20th May 1990. He was then given a break till 20th June 1990 but then was again appointed and worked from 21st June 1990 till 20th November 1990. He worked on a permanent post of a driver. He put continous service for more than 240 days. Even then he is orally terminated on 21st November 1990. His termination is in violation of mandatory provisions of Section 25 F and 25 G of the Industrial Disputes Act, 1947. Besides, the Sub-Divisional Officer appointed one Shri Rauth and one Shri Mulani in his place although they are juniors. According to him, therefore, his oral termination is an unfair labour practice under various clauses of item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Consequently, he prayed for requisite declaration of unfair labour practice, reinstatement with continuity of service and full back wages.

4. It is further contended by the Complainant that he, on his termination, met the Sub-Divisional Officer from time to time to reinstate him and Sub-Divisional Officer orally assured to reinstate him within a short period, however, backed out from the assurance. He then sent notice dated 15th October 1991 to reinstate him but it was neither replied nor complied. As such, there are good and sufficient reasons to condone the delay. He filed separate application (Exh. 9) on 14th October 1992 for condoning the delay.

5. Sub-Divisional Officer filed its composite written statement at Exh. C-13 contending that the Complainant was engaged purely on temporary basis on daily wages from 2nd August 1989 to 20th May 1990. He was then absent from 21st May, 1990 to 20th June 1990 and, therefore, driver's job was entrusted to another driver for convenience of the Department. The Complainant was again given work from 21st June 1990 till 5th November 1990. The jeep needed heavy repairs and was sent to Ratnagiri Workshop. It was under repairs till 20th March 1991. The Complainant was then asked to attend the work but refused. Eventually, another driver was engaged. It is further contended that permanent posts are required to be filled in through Employment Exchange Office only and, therefore, the Complainant is not entitled to any relief.

6. As regards condonation of delay, it is contended by the Sub-Divisional Officer that he never assured to Re-employ and reasons there of are false and fabricated. Finally, he prayed to dismiss delay condonation application as well as the Complaint.

7. The Labour Court then framed issued at Exh. 15 and the parties went to the trial. The Complainant examined himself at Exh. 16 and produced certificate regarding his working days. Neither oral nor documentary evidence was adduced by the Sub-Divisional Officer.

8. The Labour Court on perusal of evidence and hearing both parties, disbelieved Sub-Divisional Officer's plea of abandonment of service. It then held that oral termination in contravention of provisions of Section 25 F and 25G of the I. D. Act is bad in law and amounts to an unfair labour practice under items 1(*b*) and (*f*) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. As regards, back wages, it observed that the Complainant must have got some employment being trained driver and hence granted 50% back wages from the date of filing of the complaint. Ultimately, it allowed the complaint partly by judgment and order dated 25th November 1998. The same is challenged in this Revision.

9. I heard both sides. Considering rival pleading, following points arise for my determination :—

(*i*) Whether impugned finding that there are good and sufficient reasons to condone the delay, is justifiable ?

(*ii*) Whether impugned judgment and order directing reinstatement with 50% back wages from the date of presentation of the complaint, is justifiable ?

(*iii*) What Order ?

10. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The Revision Application is dismissed.

Reasons

11. This being Revision under section 44 of the M. R. T. U. and P. U. L. P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

12. It is settled law that the Courts should not be hyper technical while condoning the delay but rather liberal. The delay appears to be of marginal period. I, therefore, find that the learned Labour Court has rightly condoned the delay. Accordingly, I answer Point No. 1 in the affirmative.

13. Shri Mangsule, learned Assistant Government Pleader representing the Sub-Divisional Officer tried to canvas that the Complainant abandoned the service and, therefore, services of another person were required to be taken. Delay in approaching the Court is indicative of abandonment of service.

14. The Complainant has produced certificate of his working days issued by the Sub-Divisional Officer himself. It is stated that he has worked from 21st July 1989 till 17th October 1990. Thus, he has put in continous service of more than 240 days. There is no oral or documentary evidence to substantiate the contention that the Complainant was

asked to join the duty but refused. Consequently, learned Labour Court has rightly disbelieved plea of Sub-Divisional Officer. I do not find any perversity or arbitrariness in reasoning thereof. Complainants oral termination without complying provisions of Section 25 F and G of the I. D. Act is bad in law. Therefore, he is rightly ordered to be reinstated. Direction to pay 50% back wages from 22nd June 1992 *i. e.* excluding period of delay is also reasonable and proper. As such, no interference is called for. Accordingly, I answer Point No. 2 the affirmative and pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 23rd January 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 214 Of 1994.—Shri Anant Mahadeo Kambli, Phanaswadi, A/p. Kapsal, Tal. Chiplun, Dist. Ratnagiri.—*Petitioner.*—*Versus*—The Chairman, Nav-Konkan Education Society, Chiplun, District Ratnagiri. — *Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

Coram.— Shri C. A. Jadhav, Member.

Advocates.— Smt. N. A. Ramtirthakar, Advocate for the Petitioner.

Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent challenging legality of judgment and order passed in Complaint (ULP) No. 232 of 1989 by the Labour Court, Kolhapur, where by relief of reinstatement by setting aside his alleged termination, is refused by dismissing his Complaint.

2. The present Petitioner (hereinafter referred to as the Complainant) filed above Complaint on 28th December 1989 alleging that he was in employment of present Respondent (hereinafter referred to as the Education Society) from 25th August 1988 as a peon on daily wage basis. He was doing work of perennial nature, worked continuously for 240 days without break. Even then, he is illegally terminated on 24th October 1989 without one month's notice or pay thereof or paying retrenchment compensation. Besides, no seniority list was exhibited on the Notice-board and the principle "last come first go" is not followed. Education Society's such act, therefore, is an unfair labour practice under item 1(*a*), (*b*), (*f*) and (*g*) of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971. Consequently, he claimed reinstatement with continuity of service and full back wages.

3. The Education Society filed its written statement at Exh. 12 contending that it runs a Collage at Chiplun and the Principal of said college is the head. The Principal alone appointed him and that too as a casual worker. It (Education Society) never appointed him and, therefore, there is no relationship of employer-employee. Besides, the Complainant was engaged only as a causal workman. He was never muster roll of Society or College. Moreover, he has not worked for 240 days in a year. His services were never required after August 1989 and therefore was not engaged. As such, it has not engaged into any unfair labour practices. Finally, it prayed for dismissal of the Complaint.

4. The Labour Court then framed issues at Ex. 13 and the parties went to the trial. The Complainant simply examined at Exh. U-14. The Society examined Registrar of the College at Exh. 17 and produced receipt/vouchers about payment of charges to the Complainant.

5. The Labour Court on perusal of evidence and hearing both parties, held that the Complainant was not employed through official source of recruitment and that too for work of casual nature. It then dis-believed plea of working of more than 240 days. Ultimately, it held that no unfair labour practice is proved and dismissed the complaint *vide* judgment and order date 24th October 1994. The same is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision dismissing the complaint, is justifiable ?

(*ii*) What Order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M. R. T. U. and P. U. L. P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

9. Smt. Ramtirthakar, learned Advocate representing the Complainant argued that the Complainant was doing work of perennial nature but was given artificial breaks. Provision of Section 25 F and G of the I. D. Act were not complied before terminating the Complainant but the Labour Court did not appreciate such aspects properly and arbitrarily dismissed the Complaint.

10. Shri D. N. Patil, learned Advocate representing the Education Society replied that Complainant's services were availed as and when needed. He worked in various departments of the college as and when needed and was paid on voucher. Plea of putting continous service of 240 days is without material particulars as well as evidence. On the contrary, vouchers produced on record clearly show that he was employed as a casual worker. Therefore, the Labour rightly dismissed the complaint.

11. Although, the Complainant deposed that he worked from 25th August 1988 to 24th October 1989, he replied in the cross-examination that he has no evidence except his words to prove that he worked for 240 days. On the other hand, vouchers produced on record show that he worked casually in various Departments of the College as and when work was available. Thus, it cannot be accepted that he was doing work of perennial nature. The fact that no monthly wages were paid to him and his name was not entered on the muster roll further fortifies Society's contention that he was casual workers. Consequently, question of his termination does not arise at all. Besides, there is no positive and convincing evidence to show that he has completed 240 days of continous service as provided under section 25 B of the I. D. Act. In such circumstances, I find that learned Labour Court has rightly refused to grant any relief to him. Impugned decision no where suffers any perversity or arbitrariness warranting interference by this Court. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 31st January 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 19 Of 1998.—Divisional Traffic Supdt. (Defl), Maharashtra State Road Transport-Corporation, Sangli.—*Petitioner.*—*Versus*—Shri Vasant Yashwant Jadhav, At Post : Urun-Islampur, Tal. Walwa, Dist. Sangli.— *Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

Coram.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. N. Kulkarni, Law Office for the Petitioner.

Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 49 of 1993 by the Labour Court, Sangli, where by present Respondent - Original Complainant is ordered to be reinstated with continuity of service but without back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) started working with present Petitioner (hereinafter referred to as the State Transport Corporation) as a conductor since the year 1970 and was made permanent on 1st August 1972. He was on duty on 24th October 1991 on Islampur - Aitwade (Budruk) route. It was a night duty bus and was to halt at Aitwade (bk). The Complainant took the bus Aitwade (bk) and slept therein. Assistant Traffic Inspector and his colleges then visited the bus, made the Complainant to wake up and then took him in the office of Gram-panchayat Aitwade(bk) at 11.15 p. m. Assistant Traffic Inspector and his colleges then took his alcohol test with the help of requisite blowing machine. A report was then made to higher authority that the Complainant was found to have consumed liquor in vehicle of the Corporation. He was then served with chargesheet dated 20th November 1991 alleging misconducts under clauses 10 (indiscipline) and 42 (found to have consumed alcohol while on duty and/or outside the duty hours within the premises or vehicle of the Corporation of discipline and Appeal Procedure, applicable to the State Transport Corporation. The Complainant denied allegation and then an enquiry took place. The enquiry Officer, on completion of enquiry, held that all the charges levelled against the Complainant are proved. Eventually, the Complainant was dismissed with effect from 18th January 1993.

3. It is case of the Complainant that charges levelled against him are vagues. The enquiry was not legal and proper. Principles of natural justice were not followed. Besides, No charges are proved in the enquiry and findings of the Enquriy Officer are perverse. In the alternate, punishment is shockingly disproportionate. Eventually, he prayed for reinstatement with continuity of service and full back wages.

4. The State Transport Corporation filed written statement at Exh. C-3 and traversed all material allegations made by the Complainant. It contended that the Complainant committed grave and servious misconducts and, therefore, was rightly chargesheeted. Enquiry is altogether well consistent with principles of natural justice. Findings of the Enquiry Officer are well supported and justified by the evidence on record. Considering gravity of the charges, punishment of dismissal is proper. Besides, Complainant's past record is not clean and unblemished. Finally, it prayed for dismissal of the Complaint.

5. The Labour Court framed issues at Ex. 0-3 and the parties went to the trial. The Complainant filed pursis (Exh. U-8) admitting that the enquiry is legal and proper and did not lead oral evidence. The Corporation too did not lead oral evidence but produced entire enquiry papers.

6. The Labour Court on perusal of evidence produced on record and hearing both parties, firstly held that finding of the Enquiry Officer are not perverse. It then held that Complainant was not found behaving in a dis-orderly manner though consumed liquor and his past record is not very bad. It, therefore, held that punishment of dismissal is shockingly disproportionate considering nature of proved misconduct. Ultimately, it held that reinstatement without back wages will be proper and then allowed the complaint partly, *vide* judgment and order date 28th November 1994. The same is challenged in this Revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision directing reinstatement with continuity of service but without back wages, is legal, proper and correct ?

(*ii*) What Order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

9. Admittedly, the Complainant has not filed counter Revision as regards finding of labour Court that misconduct is proved as well as refusal of back wages. On the contrary, Shri Patil, learned Advocate representing him supported the entire decision. Thus, it can be well said that the Complainant has no grudge regarding proved misconduct and refusal of back wages. Even otherwise, I find that the enquiry is well commensurate with principle of natural justice and finding thereof are legal and proper. With such observations I proceed further.

10. This being a Revision under section 44 of the M. R. T. U. and P. U. L. P. Act, it is not necessary to scrutinise the rival pleadings meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

11. Shri Kulkarni, learned Law Officer of the Corporation vehemently argued that the Complainant had cash with him as the bus was to halt at Aitawade (BK) even then he consumed the liquor. He was a person of trust. The misconducts are proved one and therefore, the labour Court had no jurisdiction to interfere but it interfered by exceeding the jurisdiction. He further added that proved misconduct is serious, even then Labour Court showed misplaced sympathy to the Complainant. In support of his arguments, he relied on decision in *Thirumangalam Co-operative Urban-Bank Ltd.* V/s. *Asstt. Commissioner of Labour Madurai and Anr. reported in 1992-- II LLN at page 763 (Madras H. C.).* Finally, he submitted that the Revision Application be allowed.

12. Shri Patil, learned Advocate representing the Complainant replied that the misconduct is not serious like fraud, theft or misappropriation. The Complainant is serving since the year 1970 and not found guilty of similar misconduct in the past. Therefore, the Labour Court rightly exercised its jurisdiction under section 11A of the I. D. Act and directed reinstatement. In support of his arguments, he relied on a decision of Hounourable Apex Court in *Jaswant Singh* V/s. *Pepsu Roadways Transport Corpn. and anr.* V/s. *reported in 1984(49) FLR at page 193 (S.C.)* Finally, he prayed for dismissal of the Revision Application.

13. In my humble opinion, gravity of misconducts depends upon the nature of duties entrusted to a delinquent Employee. In *Thirumangalam Bank's* case (referred *supra*), the delinquent employee was nightwhatchman of Bank. Thus, he was expected to guard premises of the bank but totally deviated from the duties as well as trust of employer Thus, facts therein are totally different and observations therein are of no help to the Corporation.

14. In *Jaswant Singh's* case (referred *supra*), the delinquent employee was a driver of mechanically propelled vehical and found to have consuming liquor while on duty. In the present case, the Complainant was simply sleeping in the bus and was not at all found behaving in a disorderly manner. Therefore, punishment of dismissal, considering his length of service and no major misconducts, is certainly disproportionate. No prudent employer will impose such punishment. I, therefore, find that learned Labour Court has rightly directed reinstatement without back wages. Non-payment of back wages for intervening period of about 58 months will be sufficient to refrain the Complainant from commiting similar or any other misconduct, in futuer.

15. In the background of above discussions, I find that impugned decision is well justifiable. There is no arbitrariness or perversity to warrant interference. On the contrary, there is every substance in its reasoning. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 31st January 2002.

(Sd.)
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA

AT KOLHAPUR

REVISION APPLICATION (ULP) No. 69 Of 2001.—Offshore Power Operations C. V., Dabhol Power Plant, At Anjanvel, Taluka Guhagar, District Ratnagiri.—*Petitioner.*—*Versus*— Shri Ravi Garg, House No. 54, DPC/OPO CV Housing Colony, Dabhol Power Plant, At Anjanvel, Tal. Guhagar, District Ratnagiri.— *Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri R. G. Rane, Advocate for the Petitioner.

Shri G. M. Thomas, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent challenging legality of interim orders passed below Exh. U-2 in Complaint (ULP) No. 233 of 2001 by the Labour Court, Kolhapur restraining it from evicting original Complainant from residential quarters and make available canteen, recreational and free conveyance facilities to him, pending the hearing and final disposal of main complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Company) appointed present Respondent (hereinafter referred to as the Complainant) as a Commercial Engineer with effect from 16th May 1998 on gross salary of Rs. 38, 903 per month alongwith other attendant benefits such as canteen, free conveyance and recreation. The Company then confirmed him on 16th November 1998. The Respondent Company is a limited partnership firm incorporated under the Laws of Netharlands. It has an agreement with the Dabhol Power Company which is a unlimited Company registered under Indian Companies Act, 1956. The agreement was for operation and maintenance of 740 M. W. Dabhol Power Plant Phase I of the Dabhol Power Company. The Respondent Company employed about 400 employees. The Respondent Company then served letter dated 17th August 2001 stating that "Severance Plan" is offered to him due to restructuring of the organisation and asked him to collect dues from Human Resources Department. The Respondent Company on same day issued another letter to the Complainant advising to vacate its house latest by 27th August 2001. The Complainant accepted cheque of Rs. 7,19,035 from the Respondent Company under protest, *vide* letter dated 27th August 2001. He sent another letter of same date declining to evict residential quarters.

3. It is case of the Complainant that he was directed to work in the Procurement Section of the Administrative Department of the Company to assist employees concerned in the Procurement of various materials and services. He was supposed to received the demands made by various Departments for material and services. He then used to prepare the demands and documents for sanction by Appropriate Authority. After approval, he was required to issue tender to different parties, then to compile the tenders and forward it for technical approval. He was then again to prepare operational and commercial findings of the approved offer and then to submit the papers for recommendations and approval of the Finance Department and concerned authorities. In such entire process, he was doing necessary typing work, operating computer and delivering urgent letters to concerned authorities by keeping liason with them. He was also required to pursue Accounts Department for payment of respective parties in time so that work order can be executed within time. He was doing all such work under supervision and guidance of Officers of the Company. Basically, his work was more of the clerical nature although was branded as a Commercial Engineer. In fact, he had no financial, administrative or managerial powers. He worked under different Officers from time to time. Later on, his designation was unilaterally changed as Procurement Manager by letter dated 22nd January 2001 and seconded to work under purchasers Delegate Office of Dabhole Power Company and that too on probation period of 6 months with effect from 30th October 2000. He was asked to report to Mr. Jim Marzonie. He then worked under Mr. Jim Marzonie till 17th August 2001.

It is further alleged that his re-designation was with an ulterior motive to take out him from the purview of I. D. Act and then to terminate him from services. However, he was doing same work as before. Alleged 'Severance Plan' is a unilateral coercive action which amounts to forcible termination as the same is without his consent and in violation of provisions of sections 25F and 25 N of the I. D. Act. It is further alleged that re-structuring of organisation is not a genuine reason of his termination. As such, the Company has engaged in unfair labour practice under items 1(*a*), (*b*), (*d*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

4. The Complainant also filed an application (Ex. U-2) under section 30(*2*) of the M.R.T. U. and P.U.L.P. Act for temporary interim reinstatement or payment of 90% back wages, restraining the Company from evicting him from residential quarters and to extend attendant facilities as before, till decision of main complaint.

5. The Respondent Company filed its say-*cum*-written statement at Exh. C-12 contending at the outset that the Complainant was appointed as a Commercial Engineer, then Procurement Manager and was doing supervisory, administrative and managerial work since beginning. As such, is not a 'workman' as defined under the I. D. Act. Eventually, he cannot resort to provisions of M.R.T.U. and P.U.L.P. Act, 1971. In fact, considering amount of his salary he cannot be a workman under the I. D. Act, 1971.

6. It is further contended by the Respondent Company that this aspect of the matter can be appreciated and understood by examining the evidence which will be led before the Court. Therefore, the Complainant is not entitled to any interim relief.

7. It is further case of the Company that a dispute arose out of agreement between Maharashtra State Electricity Board and Dabhol Power Company as the Maharashtra State Electricity Board stopped purchasing the power whereby the plant was forced to be kept idle. Obviously, therefore, the Respondent Company is without work and cannot continue to employ staff. Eventually "Severance Plan" was prepared. Disputes between Dabhol Power Company and the Maharashtra State Electricity Board are pending before Honourable Supreme Court and Honourable High Court of Judicature at Bombay as well as International Forum for Abitration. Therefore, the Complainant has no right to claim protection under any of the provisions of the I. D. Act. As per "Severance Plan" the Complainant was paid gross amount of more than Rs. 10,00,000 for megre services of $2^{1}/_{2}$ years. Eventually, he has no right to stay in the residential quarters. Finally, the Company prayed to frame preliminary issue in the light of objections and to reject the interim relief application.

8. The Labour Court, on perusal of documents, affidavits and counter affidavits as well as hearing both sides, observed that "Severance Plan" is Company's unilateral Act, the Complainant did not consent for the same and, therefore, it amounts to forcible termination as on 17th August 2001. It then held that the termination is in violation of provisions under sections-25 F and 25 N of the I. D. Act. As such, the termination, is *prima facie,* an unfair labour practice.

9. The Labour Court, further held that primary and basic duties of the Complainant were of clerical nature and thus is covered by the definition "workman" under the I. D. Act. It then observed that the Company has paid substantial amount to the Complainant and therefore, he will not be put to inconvenience if relief of temporary interim reinstatement is refused. It then observed that evicting the Complainant from residential quarters will be unjust and continuation of attendance benefits as before to him will not cause inconvenience to the Respondent Company. Ultimately, it allowed interim application (Exh. U-2) partly restraining the Company from evicting him from residential quarters and make available canteen, recreational and free conveyance facilities to him till decision of main complaint, *vide* order dated 7th December 2001. The same is challenged in this revision.

10. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order granting some interim reliefs to the Complainant is legal, proper and justifiable ?

(*ii*) What order ?

11. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

12. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

13. I must refer, at the outset, that Shri Thomas, Learned Advocate representing the Complainant, invited my attention to the limited jurisdiction of this Court under section 44 of the M.R.T.U. and P.U.L.P. Act. In support thereof, he relied upon following decisions, *Viz* :—

(*i*) *Janata Sahakari Bank Ltd.* V/s. *Dilipkumar Hiralal Chhatbar reported in 1991 II CLR at page 574 (Bom. H. C.).*

(*ii*) *Maharashtra State Road Transport Corporation* V/s. *Kantrao Gyanbarao Dabhale reported in 2000 II CLR at page 865 (Bom. H.C.), and*

(*iii*) *Gajanan S/o Shamrao Thakre* V/s. *Maharashtra State Road Transport Corporation, reported in 2000 III CLR at page 99 (Bom. H.C.).*

14. I am respectfully bound by the observations in above decisions and limited jurisdiction under sec. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

15. Shri Rane, Learned Advocate representing the Respondent Company vehementaly argued that the fact that Maharashtra State Electricity Board refused to purchase powers from Dabhol Power Company is an open secret and judicial note thereof must be taken. Eventually, the Respondent Company was compelled to dis-continue various agreements and forced to terminate non-workmen. There were 150 employees from the managerial category, out of which, only 37 are retained and that too on contract basis for bare necessary operations. The person *viz.* Shri Arvind Dattaram Nabar who has filed affidavit in this Revision is also on contract service, requiring only 5 days notice of termination from either sides. Thus, the Respondent Company has now ceased to be an ' industry '. The Complainant was getting salary of Rs. 50,492 per month when terminated and is totally paid Rs. 10,09,172 by the 'Severance Plan'. Even then, the Complainant has stretched legal principles to impermissible limits. In fact, provisions of I. D. Act are meant for weaker sections of the society and is a "bread and butter" statute. Now, entire plant is shut down and no work is available. Therefore balance of convenience lies in favour of the Respondent Company and intervention by the Labour Court was totally unwarranted. The Complainant had status of gold coller employee and would not have suffered irreparable injuries if interim relief is refused. Interim relief granted can well be compensated in terms of money. He further added that the Respondent has specifically denied that the Complainant was doing work of clerical nature and, therefore, the Labour Court ought not to have granted interim relief. Finally, he submitted that the Revision Application be allowed.

16. Shri Thomas, Learned Advocate representing the Complainant countered above arguments and replied that salary is not the criteria to determine status of " workman" as defined under the I. D. Act. The Complainant was mainly and substantially doing work of clerical nature and, therefore, the Labour Court has rightly held *prima facie* that the Complainant is a " workman". Severance benefits were accepted under protest. Severance is a unilateral act, is in violation of provisions of the I. D. Act and, therefore, void *ab-initio*. No retrenchment Compensation is paid to the Complainant. He is a handicapped person and can prosecute original complaint if is allowed to stay in residential quarters. The Respondent Company has indulged into an unfair labour practice and, therefore, cannot say that no intervention was warranted by the Labour Court. He further added that both parties consented for expeditious hearing of original complaint within 3 months and, therefore, the company ought not to have approached the Revisional Court to delay main trial. The Labour Court has rightly granted some interim reliefs and grounds in the Revision Application are usual one requiring no interference. Finally, he supported impugned order and prayed for dismissal for the Revision Application.

17. Honourable Apex Court in *Arkal-Govind Raj-Rao* V/s. *Ciba Gigy of India Ltd., Bombay reported in 1986 (52) FLR* at page *19* has held that the Court must find out what are the primary and basic duties of a person concerned and dominant purpose of employment must be considered first. It is further observed that a person shall not be ceased to be a workman if he performs some supervisory duties but he must be a person who is engaged in a supervisory capacity.

18. In the light of dictum of Honourale Apex Court, Complainant's salary cannot be a criteria to decide his status under the I. D. Act, however, nature of his dominant duties are material. Documents produced on record, *prima facie*, show that he was to assist. Senior Manager. The Company has no where pleaded regarding his alleged managerial, administrative and supervisory duties. Eventually, Company's contention that he was not a " workman" under the I. D. Act, is *prima facie,* unacceptable. It appears from record that he was paid bonus and compensatory off for the extra work done during holidays, off days etc. Besides, there are specific averments in the complaint that he was mainly doing clerical work. As such, *Prima facie,* factual finding of Labour Court that he is a " workman" as defined under the I. D. Act, is well justifiable.

19. It is not case of the Respondent company that the Complainant consented to opt for "Severance Plan". On the contrary, it has come on the record that he accepted benefits of "Severance Plan" under protest. As such, *prima facie,* finding of Learned Labour Court that he was forcibly terminated, is legal and proper.

20. It has also come on the record that Respondent company paid substantial amount to the Complainant under "Severance Plan". It further appears from impugned order that Company's Advocate made submission before Learned Labour Court that the Complainant can well be compensated with full back wages and will not suffer irrepairable loss at interim stage. In my judgment, therefore, Learned Labour Court has rightly refused interim temporary reinstatement. Besides, no material purpose would have been served by granting interim temporary reinstatement as the plant is practically shut down.

21. Admittedly, the Complainant was enjoying canteen, free conveyance and recreational facilities. Respondent Company has unilateraly terminated his services, which is *prima facie,* an unfair labour practice. It cannot be ignored that Respondent Company has still residential quarters at its site. The Complainant is a handicapped person. He cannot be thrown out of the residential quarters despite engagement of the Respondent Company in an unfair labour practice. Refusal of requisite interim relief granted by learned Labour Court will amount to continuation of unfair labour practice by the Court, which is impermissible under law. Learned Labour Court has already directed expeditious hearing of main complaint and the same is likely to be completed within 3 months. The Respondent Company, therefore, will not suffer irrepairable injury if continues requisite attendant benefits to the Complainant, as rightly directed by the Labour Court. I, therefore, find that impugned order is well justifiable and no where smells of perversity or arbitrariness.

22. I must add that when a *prima facie* finding of an unfair labour practice is arrived at, the Court may pass such interim order as it deems just and proper, as provided under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act. In the present case, the Respondent has forcibly terminated services of the Complainant and therefore, it was just and proper for him to claim requisite relief and Learned Labour Court has rightly granted the same, in the peculiar facts and circumstances of this case. As such, impugned order does not warrant any interference.

23. In the light of above discussions and limitations under section 44 of the M.R.T.U. and P.U.L.P. Act, I hold that impugned order granting some interim reliefs is well justifiable. It no where suffers from perversity. On the contrary, there is every substance in its reasoning. Accordingly, I answer Point No. 1 in the affirmative. Original Complaint is already expedited by the Labour Court and it is not necessary again to direct expeditious hearing within 3 months.

24. In the result, I pass the following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. and P. be sent forthwith to Labour Court, Kolhapur.

(*iii*) The parties shall appear there on 11th February 2002 and get main complaint decided at the earliest.

(*iv*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 31st January 2002.

(Signed)
Asstt. Registrar,
Industrial Court, Kolhapur.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.